Supreme Court, U.S.
FILED
FEB 20 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-505

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CHICK KAM CHOO, et al.,

Petitioners,

—vs.—

EXXON CORPORATION, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF AMICUS CURIAE ON BEHALF OF INTERNATIONAL CHAMBER OF SHIPPING, IN SUPPORT OF RESPONDENTS EXXON CORPORATION, ET AL.

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SUMMARY OF ARGUMENT

A. Forum non conveniens is an equitable doctrine which has its roots in admiralty cases. The doctrine provides defendants a right to object to the plaintiff's choice of a proper but severely inconvenient forum. Gulf Oil v. Gilbert, 330 U.S. 501 (1947).

B. Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938) requires a federal court sitting in diversity to apply the forum state's substantive law to avoid disturbing equal administration of justice and to avoid forum-shopping within the state.

C. The so-called "reverse-Erie" doctrine requires state courts exercising maritime jurisdiction to apply maritime substantive law. Off-Shore Logistics Inc. v. Tallentire, 477 U.S. 207 (1986).

D. The "reverse-Erie" doctrine clearly manifests a national policy that uniform application of maritime law, equal administration of justice and avoidance of forum-shopping in maritime law are paramount to an individual state's interest in equal administration of justice, uniformity and avoidance of forum-shopping within the state. Romero v. International Terminal Operating Co., 358 U.S. 354 (1959); Hanna v. Plumer, 380 U.S. 460 (1965).

E. If states implement local "open forum" policies in foreign disputes arising under maritime law, maritime defendants will be deprived of a traditional, equitable right to seek relief proscribing litigation in an inconvenient forum which has no relationship with a foreign dispute. Foreign defendants would often be denied access to a convenient venue in Jones Act cases,

which cannot be removed to the federal courts. Pate v. Standard Dredging, 193 F.2d 498 (5th Cir. 1952).

F. This Court should require all state and federal courts to apply federal maritime forum non conveniens standards in Jones Act and maritime cases, and this Court should affirm the judgment below enjoining the plaintiff from commencing another action to recover damages arising our of the identical occurrence here in dispute. Pastewka v. Texaco, Inc., 565 F.2d 851 (3d Cir. 1977).

International Chamber of Shipping ("the Association"), and its respective members, respectfully submit a brief amicus curiae, in support of Respondents herein, on consent of all parties pursuant to Rule 36.2. The consent of Petitioners is evidenced by their letter to counsel for the Association dated February 9, 1988, and the consent of Respondents by their letter to counsel for the Association dated February 12, 1988; the originals of these letters have been submitted to the Clerk for filing with this Brief.

INTEREST OF AMICUS CURIAE

The Association is an organization of national shipowners' associations. The Association's members represent approximately two-thirds of the free world's ocean-going vessel tonnage, flying the flags of numerous maritime countries. The vessels owned and operated by the members of the Association

provide regular employment for hundreds of thousands of seafarers throughout the world. A substantial number of vessels owned or operated by members of the Association call at ports of the United States. The Association and its respective members are therefore materially affected by the issues before the Court on this appeal, inasmuch as the lack of uniform application of the doctrine of forum non conveniens in the United States subjects them to disparate treatment depending solely upon the whim of a litigant in the selection of the United States forum in which to proceed. In the Association's view, such circumstances contravene the needs of international maritime commerce for uniformity in the application of the laws of the maritime countries of the world and frustrate reasonable expectations of certainty in the law.

I.

UNIFORM APPLICATION OF THE JONES ACT AND GENERAL MAPITIME LAW MANDATES THAT STATE AND FEDERAL COURTS APPLY FEDERAL PRINCIPLES OF FORUM NON CONVENIENS

A. Forum non conveniens is an equitable defense having its roots in admiralty law.

As noted by the court below, "forum non conveniens is a 'characteristic feature' of maritime law. The doctrine has its roots in the maritime law . . . ." Exxon Corp. v. Chick Kam Choo, 817 F.2d 307, 320 (5th Cir. 1987).

The doctrine prevents a plaintiff from choosing a technically proper, but inconvenient, forum to "vex, harrass or oppress" the defendant by inflicting upon him expenses or trouble not necessary to plaintiff's own right to pursue his remedy. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947). Gulf Oil is the landmark case which extended this equitable doctrine into actions at

law. Two dissenting justices in Gulf Oil asserted that the expansion of the doctrine from admiralty and equity into actions at law was inappropriate, arguing that dismissals on the grounds of inconvenient forum should be limited to admiralty and equity cases "[f]or reasons peculiar to the special problems of admiralty and the extraordinary remedies of equity . . . . This exception is rooted in the kind of relief which these courts grant and the kinds of problems which they solve. [C]ourts of Admiralty . . . act upon enlarged principles of equity." Gulf Oil, supra, 330 U.S. at 513-514 (citations omitted).

B. A maritime doctrine of modified forum non conveniens generally was applied in Jones Act claims prior to this Court's Reyno decision.

Prior to this Court's decision in Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981), it was generally accepted in the lower

courts that maritime law required a special "modified analysis on forum non conveniens issues" in cases asserting claims under the Jones Act and general maritime law. See In re Air Crash Disaster Near New Orleans, La., 821 F.2d 1147, 1163, n.25 (5th Cir. 1987) (en banc).

One factor traditionally considered in determining if a court should exercise its discretion to dismiss an action on the grounds of forum non conveniens is whether or not the forum court would be constrained to determine and apply foreign law. See Gulf Oil, supra, 330 U.S. at 509; Piper Aircraft Co. v. Reyno, 454 U.S. 235, 260 n.29 (1981).

In the so called "modified analysis" of forum non conveniens principles in Jones Act and general maritime law cases, the determination of applicable law was considered pivotal; if American law applied, the courts

had no discretion to dismiss a suit based on the Jones Act or the general maritime law of the United States. It was reasoned that "[w]hen a foreign seaman has a cause of action based on the laws of the United States, the seaman comes by right into the courts and the retention of his suit based on domestic law should be mandatory. Retention of the suit is not discretionary, because once the scope of United States law has been defined the judiciary is not free to adjudicate selectively the effects of the law." Fisher v. Agios Nicolaos V, 628 F.2d 308, 315, n.11 (5th Cir. 1980), cert. denied, 454 U.S.816 (1981), quoting Comment, A New Look at Lauritzen v. Larsen, Choice of Law and Forum Non Conveniens, 38 La.L. rev. 957, 958 (1978). See also, Antypas v. Cia. Maritima San Basilio, S.A., 541 F.2d 307 (2d Cir. 1976), cert. denied, 429 U.S. 1098 (1977); DeMateos v. Texaco,

Inc., 562 F.2d 895 (3d Cir. 1977), cert. denied, 435 U.S. 904 (1978); Szumlicz v. Norwegian America Line, Inc., 698 F.2d 1192, 1195 (11th Cir. 1983); Needham v. Phillips Petroleum Co. of Norway, 719 F.2d 1481, 1483 (10th Cir. 1983); Sigalis v. Lido Maritime Co. - M/V ROYAL ODYSSEY, 776 F.2d 1512 (10th Cir. 1983); Pereira v. Utah Transport, Inc., 764 F.2d 686, 688 (9th Cir. 1985); Villar v. Crowley Maritime Co., 782 F.2d 1478, 1479 (9th Cir. 1986).

At least three state court cases have interpreted the federal decisions as authority for barring dismissal by state courts on the grounds of forum non conveniens if the Jones Act is applicable. See Lambiris v. Neptune Maritime Co., 38 A.D.2d 528, 529; 326 N.Y.S.2d 862, 863-64 (N.Y.A.D. 1971); Miller v. Phillips Petroleum Co. of Norway, 529 A.2d 263, 270 (Del. Super. 1987); Armadora Naval Dominicana, S.A. v. Garcia, 478

So.2d 873, 877 (Fla. App. 1985).

C. There is a conflict among the circuits as to whether the maritime modified forum non conveniens doctrine is consistent with Reyno.

In Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981), this Court provided an analysis of the doctrine of forum non conveniens applied in a diversity case. In Reyno, the Court ruled that "[t]he possibility of a change in substantive law should ordinarily not be given conclusive or even substantial weight in the forum non conveniens inquiry." 454 U.S. at 247.

Based on the Reyno case, supra, the United States Court of Appeals for the Fifth Circuit recently abandoned its "modified analysis" of forum non conveniens in Jones Act and general maritime law cases:

> We also can discern no overriding justification for refusing to apply Reyno's principles and this opinion's procedural rules to forum non conveniens issues in Jones Act and general maritime cases. We believe that a single and uniform approach to the analysis and application

> of the forum non conveniens doctrine best serves litigants and the courts. We, therefore, expressly disapprove of and overrule our Jones Act and general maritime caselaw that utilizes a modified forum non conveniens analysis. Henceforth, all cases, including Jones Act and maritime actions, are governed by the dictates of Reyno and this opinion (footnote omitted).

Air Crash Disaster, supra, 821 F.2d at 1164, n.25; accord, Cruz v. Maritime Co. of Philippines, 702 F.2d 47, 48 (2d Cir. 1983).

The United States Courts of Appeals for the Ninth, Tenth and Eleventh Circuits, however, apparently still subscribe to the view that American courts have no discretion to dismiss a case if the Jones Act or the general maritime law of the United States applies. See Needham v. Phillips Petroleum Co. of Norway, supra, 719 F.2d at 1483; Szumlicz v. Norwegian American Line, Inc., supra, 698 F.2d at 1195; Pereira v. Utah Transport, Inc., supra, 764 F.2d at 688. Therefore, if the Ninth, Tenth and Eleventh Circuits are correct that a suit based on

the Jones Act and general maritime law cannot be dismissed if American law is applied, maritime choice of law concepts are the cornerstone of any forum non conveniens analysis in such cases. If the Second and Fifth Circuit Courts of Appeals are correct that this court's Reyno decision overrules the "modified analysis" in Jones Act and General Maritime Law cases, maritime choice of law principles nevertheless remain an integral and important part of a forum non conveniens analysis of both state and federal courts. See Lauritzen v. Larsen, 345 U.S. 571 (1953); Romero v. International Terminal Operating Co., 358 U.S. 354 (1959); Needham, supra; Szumlicz, supra; Pereria, supra; Piper, supra, 454 U.S. at 260, n.29.

D. The need for uniform application of a state's doctrine of forum non conveniens by the state and federal courts within the state is superceded by the need for uniform application of the maritime doctrine of forum non conveniens throughout the United States.

We submit that principles of harmony and uniformity in maritime law should require the application of federal maritime law in both federal and state courts to determine if the balance of the forum non conveniens factors warrant dismissal of claims asserted under the Jones Act and general maritime law.

As noted supra, both state and federal courts are required to apply federal maritime choice of law principles to determine applicable law in Jones Act and general maritime law cases. See, e.g., Romero, supra, 358 U.S. at 389. This is a departure from the doctrine announced in Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938), which, if applicable, would require the federal courts to apply the forum state's choice of law principles. Erie held that federal courts sitting in diversity must apply the substantive law of the forum state to avoid

forum-shopping and to insure the uniformity of administration of justice within the state. In Klaxon v. Stentor Electric Manufacturing Co., 313 U.S. 487 (1941), this Court held that a federal court sitting in diversity must apply the choice of law rules of the forum state, stating:

> Otherwise the accident of diversity of citizenship would constantly disturb equal administration of justice in coordinate state and federal courts sitting side by side. See Erie R. Co. v. Tompkins, supra, at 74-77. Any other ruling would do violence to the principle of uniformity within a state upon which the Tompkins decision is based. Whatever lack of uniformity this may produce between federal courts in different states is attributable to our federal system, which leaves to a state, within the limits permitted by the Constitution, the right to pursue local policies diverging from those of its neighbors. It is not for the federal courts to thwart such local policies by enforcing an independent "general law" of conflict of laws. (Emphasis supplied)

Klaxon, supra, 313 U.S. at 496.

It is well settled, however, that in a case involving Jones Act and general mari-

time law claims, the state and federal courts both must apply federal choice of law principles. See Hellenic Lines, Ltd. v. Rhoditis, 398 U.S. 306 (1970); Romero, supra, 358 U.S. at 389; Lambiris, supra, 38 A.D.2d at 529, 326 N.Y.S.2d at 864. Clearly, application of federal, rather than state, choice of law principles in Jones Act cases does "violence to the principle of uniformity within a state", Klaxon, supra, 313 U.S. at 496, in order to effectuate the paramount goal of uniformity in admiralty. If state courts, already constrained to apply federal maritime choice of law rules in Jones Act and general maritime cases, were also required to apply federal principles of forum non conveniens, the desired uniformity in admiralty would be obtained, i.e., forum shopping (such as has occurred in the case at bar) would be discouraged, and uniformity of administra-

tion of justice in determining the convenient forum for litigation of Jones Act and general maritime law cases would be assured.

Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953), made it clear that Erie's mandate for uniform application of a state's law by federal and state courts within the state is superceded by the need for uniform application of maritime law throughout the United States. In Hawn, supra, the defendant asserted that the federal court should apply Pennsylvania law to bar a maritime tort claim on the grounds of contributory negligence because plaintiff had invoked the federal court's diversity, rather than admiralty, jurisdiction. The Court nonetheless held that the maritime doctrine of comparative negligence applied because the basis of the action was ". . . a maritime tort, a type of action which the Constitution has placed under national power to

control in its substantive as well as its procedural features . . . ." Hawn, supra, 346 U.S. at 409 (citations and quotations omitted).

The Court declined to apply state law, stating:

> Thus we are asked to use the Erie-Tompkins Case to bring about the same kind of unfairness it was designed to end. Once again, the substantial rights of parties would depend on which courthouse, or even on which "side" of the same courthouse, a lawyer might guess to be in the best interests of his client. We decline to depart from the principle of equal justice embodied in the Erie-Tompkins doctrine. Of course, the substantial rights of an injured person are not to be determined differently whether his case is labelled "law side" or "admiralty side" on a district court's docket.

346 U.S. at 411 (emphasis added).

In Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942), the state trial courts had held that the burden of proving the invalidity of a release was a procedural question under Erie and was therefore governed by state law which placed the burden of proof

on the seaman-releasor. This Court reversed, holding that the characterization of the burden of proof as "procedural" by the state courts did not mandate application of state law because the burden of proof to determine the validity of releases affects the substantive rights of parties rooted in maritime law. The Court characterized the question as follows:

> [H]aving voluntarily opened its courts to petitioner, the questions are whether Pennsylvania was thereupon required to give the petitioner the full benefit of federal law and if so whether it failed to afford that benefit.

317 U.S. at 243.

The Court continued:

> The source of the governing law applied is in the national, not the state, governments. If by its practice the state court were permitted substantially to alter the rights of either litigant, as those rights were established in federal law, the remedy afforded by the state would not enforce, but would actually deny, federal rights which Congress, by providing alternative remedies, intended to make not less, but more secure. The constant objective of legislation and jurisprudence is to assure litigants full protection for all substantive rights intended to be afforded them by the jurisdiction in which the right itself orginates. * * * So here, in trying this case the state court was bound to proceed in such manner that all the substantial rights of the parties under controlling federal law would be protected.

Garrett, supra, 317 U.S. at 245-46.

Based on Garrett, supra, and other precedents, this Court recently announced that state courts should follow a so-called "reverse-Erie" doctrine to determine if they should apply federal maritime standards in a maritime case.

In Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986), 91 L.Ed.2d 174, this Court stated:

> [T]he "savings to suitors" clause allows states courts to entertain in personam maritime causes of action, but in such cases the extent to which state law may be used to remedy maritime injuries is constrained by a so-called "reverse-Erie" doctrine which requires that the substantive remedies afforded by the States conform to governing federal maritime standards.

91 L.Ed.2d at 190.

Hanna v. Plumer, 380 U.S. 460 (1965), is a leading decision of this Court which holds that "outcome determination", rather than strict reference to distinctions between substance and procedure, is the test for determing if the federal court should apply state law. While recognizing that the "broad command of Erie" to federal courts sitting in diversity was "to apply state substantive law and federal procedural law", 380 U.S. at 465, Hanna nonetheless further defined Erie's goals:

> Guaranty Trust Co. v. York, 326 US 99 . . . made it clear that Erie-type problems were not to be solved by reference to any traditional or commonsense substance-procedure distinction:
>
> And so the question is not whether a statute of limitations is deemed a matter of 'procedure' in some sense. The question is . . . does it significantly affect the result of a litigation for a federal court to disregard a law of a State that would be controlling in an action upon the same claim by the same parties in a State court?

380 U.S. at 465-66 (citations omitted).

Hanna, supra, cautioned, however, that:

> The "outcome-determination" test therefore cannot be read without reference to the twin aims of the Erie rule: discouragement of forum-shopping and avoidance of an inequitable administration of the laws.

380 U.S. at 468 (emphasis added).

Applying "reverse-Erie" standards to the "Erie" principles espoused in Hanna, supra, provides further support for compelling state courts to apply federal maritime forum non conveniens standards in Jones Act and general maritime cases:

1. failure to enforce the federal forum non conveniens rule will result in inequitable administration of the laws, because state courts will be empowered to arbitrarily vitiate defendants' traditional right in admiralty to challenge plaintiff's choice of an inconvenient forum. This is especially so in Jones Act cases because they cannot be removed to the Federal courts where the defense of forum non con-

veniens is available. See 28 U.S.C. § 1445(a); Pate v. Standard Dredging, 193 F.2d 498, 500 (5th Cir. 1952). As stated by the Court in Hawn, supra:

> [T]he substantial rights of parties would depend on which courthouse ... a lawyer might guess to be in the best interests of his client. We decline to depart from the principle of equal justice embodied in the Erie-Tompkins doctrine.

Hawn, supra, 346 U.S. at 411.

2. Application of the state law of forum non conveniens in "open forum" states like Louisiana, and perhaps Texas, would obviously encourage forum-shopping by foreign seamen and their representatives. This will promote disunity and unpredictability into the application of maritime law in the United States. Without the restraints of forum non conveniens, foreign plaintiffs will be encouraged to import foreign controversies which have no national (or local) interest if the plaintiffs devise some

means of obtaining jurisdiction over a foreign defendant. The case at bar is a classic example. See also Kassapas v. Arkon Shipping Agency, Inc., 578 F.Supp. 400 (S.D.N.Y. 1984), affd mem. 738 F.2d 418 (2d Cir. 1987); 485 So.2d 565 (La.App. 5th Cir. (1986), writ denied, 48 So.2d 208 (La. 1986). In Kassapas, supra, the foreign plaintiffs alleged causes of action based on the Jones Act and general maritime law of the United States resulting from the deaths of two Greek seamen in the navigable waters of Russia while they were employed aboard a foreign-flag vessel owned by a foreign defendant. The United States District Court for the Southern District of New York dismissed the case on the grounds of forum non conveniens. Kassapas, supra, 578 F.Supp. 400. A dismissal was affirmed by the United States Court of Appeals for the Second Circuit. Kassapas, supra, 738

F.2d 418. Thereafter, the vessel fortuitously happened to call in the State of Louisiana, where the plaintiffs attached her and commenced an action in the Louisiana state court. Defendant moved to dismiss on the basis of res judicata or, in the alternative, on the basis of forum non conveniens and the motion was denied because Louisiana has an "open forum" policy which does not recognize dismissals on the grounds of forum non conveniens. This type of blatant forum-shopping is an abuse of the American judicial system which should not be tolerated. If state courts are required to apply uniform federal maritime principles of forum non conveniens, this abuse will be eliminated.

In Missouri Ex rel. Southern Ry. Co. v. Mayfield, 340 U.S. 1 (1950), this Court held that forum non conveniens was a "procedural" doctrine and that state courts were free to determine their own principles

of forum non conveniens in Federal Employers' Liability Act, 45 U.S.C. §§ 51 et seq. ("FELA") cases. However, the Missouri case should provide little guidance, because it is well settled that the FELA has no extraterritorial application and has no bearing on sensitive areas of international law. See New York Central Railroad Co. v. Chisholm, 268 U.S. 29, 31 (1925); Lauritzen v. Larsen, supra, 345 U.S. at 581; Cox v. Chesapeake Ohio Railroad Company, 494 F.2d 349, 350 (6th Cir. 1974), cert. denied, 417 U.S. 977 (1974).

Two recent Courts of Appeals decisions have determined that federal courts sitting in diversity should apply federal principles of forum non conveniens. Sibaja v. Dow Chemical Co., 757 F.2d 1215 (11th Cir.) cert. denied, 474 U.S. 948 (1985); In re Air Crash Disaster Near New Orleans, La., 821 F.2d 1147 (5th Cir. 1987) (en banc).

In the instant matter, the court below

held that applying a "reverse Erie" test to determine if a state court is bound to apply federal maritime principles of forum non conveniens does not result in a "reverse" answer, which mandates application of state law pertaining to forum non conveniens in Jones Act cases.

Sibaja, supra, and In re Air Crash Disaster Near New Orleans, supra, involved diversity cases, where the foreign defendant, unlike in a Jones Act case, generally has the right to seek removal from the state to the federal court.

Removal to the federal court in a diversity case will preserve the foreign defendant's right to challenge the venue of the forum state. However, since Jones Act cases cannot be removed, and application of state law "open forum" principles will deprive defendants of their right to challenge the convenience of the venue.

More importantly, the need for uniform-

ity within the confines of any given state must give way to the "... constitutionally based principle that federal admiralty law should be 'a system of law coextensive with, and operating uniformly in, the whole country.' The Lottawanna, 21 Law 558, 575, 22 L ed 654, 662 (1875)." Moragne v. United States Marine Lines, 398 U.S. 375, 401 (1970). See also Knickerbocker Ice Company v. Stewart, 253 U.S. 149, 160 (1920), where this Court stated:

> . . . The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover, it took from the states all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations. To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the Federal Government was the fundamental purpose; and to such definite end Congress was empowered to legislate within that sphere.

We respectfully submit that Texas and the other states of the United States have no local interest whatever in adjudicating foreign controversies commenced by foreign seamen or their representatives and that the arbitrary displacement of the defense of forum non conveniens so deeply rooted in maritime law would be an unwarranted intrusion by the states into international affairs. See Kossick v. United Fruit Co., 365 U.S. 731, 739:

> [M]aritime law is -- in a special sense at least, Romero v. International Terminal Operating Co. 358 US 354, 3 L ed 2d 368, 79 S Ct 468 -- federal law and therefore supreme by virtue of Article 6 of the Constitution, carries with it the implication that wherever a maritime interest is involved, no matter how slight or marginal, it must displace a local interest, no matter how pressing and significant. But the process is surely rather one of accommodation, entirely familiar in many areas of overlapping state and federal concern, or a process somewhat analogous to the normal conflict of laws situation where two sovereignties assert divergent interests in a transaction as to which both have some concern.

We submit that there is no overlapping

state and federal concern in a case where a foreign seaman or his representative asserts a claim under foreign law to recover damages for a foreign tort. Accordingly, there is no state interest to accommodate, and the federal maritime interest in a uniform law of forum non conveniens should displace the local interest of any state in restricting, expanding or vitiating a defendant's right to assert a defense based on the federal doctrine of forum non conveniens.

II.

EQUITY PRECLUDES RELITIGATION OF ISSUES ALREADY DECIDED. PRECLUSION IS NECESSARY TO PRESERVE THE UNIFORMITY OF MARITIME LAW AND TO ASSURE THAT THIS NATION'S JUDICIAL RESOURCES ARE NOT BURDENED WITH MULTIPLE LAWSUITS ARISING OUT OF A SINGLE OCCURRENCE

Petitioner-plaintiff (hereinafter called "Mrs. Choo") argues in her brief that the district court below improperly enjoined prosecution of the state court action without determining if the state court would accept jurisdiction under its forum non

conveniens doctrine. Petitioner's brief at 12. However, as is demonstrated in Point I, supra, principles of uniformity in maritime law mandate that state and federal courts apply a uniform federal maritime forum non conveniens doctrine. Therefore, Texas law is irrelevant, because the issues to be decided in the state court are the identical federal maritime issues already determined by the district court. Thus, notwithstanding Texas law, principles of equitable preclusion prevent Mrs. Choo from relitigating the issues already decided by the district court below. See Sanchez v. Caribbean Carriers Ltd., 552 F.2d 70 (2d Cir.), cert. denied, 434 U.S. 953 (1977); Pastewka v. Texaco, Inc., 565 F.2d 851 (3d Cir. 1977). Cf. Parsons v. Chesapeake & Ohio Railway Co., 375 U.S. 71 (1963), where issue preclusion was denied because the two forums applied different forum non conveniens standards.

Mrs. Choo apparently does not dispute that her claims based on the Jones Act, general maritime law, and the Death on the High Seas Act (46 U.S.C. § 761, et seq.) ("DOHSA"), are barred by the district court's decision, because she has accepted dismissal of these claims from her second lawsuit commenced in the state court. Petitioner's brief at 4, n.1. Mrs. Choo claims, however, that her subsequent state court action alleges "new" claims allegedly based on the law of Singapore and on 46 U.S.C. § 764 of DOHSA. She also claims her alleged cause of action pursuant to the Texas wrongful death statute is still viable because it supposedly was not dismissed by the district court.

The district court dismissed Mrs. Choo's claims based on the Jones Act, DOHSA and the general maritime law of the United States. See decision below, 817 F.2d at 310, n.4.

Mrs. Choo apparently does not realize that, a fortiori, her alleged claims under the Texas Wrongful Death Statute were included in the dismissal, because state remedies for deaths on the high seas have been pre-empted by the DOHSA. Mobil Oil Corp. v. Higginbotham, 436 U.S. 618 (197); Tallentire, supra, 477 U.S. 207 (1986).

Tallentire, supra, leaves open only the question of whether DOHSA "may be 'supplemented' by a recovery for the decedent's pain and suffering before death under the survival provision of some conceivable applicable state statute..." Id. 477 U.S. ____; 91 L.Ed.2d 184, n.1. However, even assuming arguendo the Texas survival statute supplements DOHSA, the claim based on the Texas statute obviously was part of the DOHSA claim that was dismissed.

Mrs. Choo's argument that she has asserted in the state court "new" claims

based on the law of Singapore and based on § 764 of DOHSA is equally misplaced. The argument reflects a misunderstanding of the distinction between choice of law concepts and concepts of forum non conveniens. Admiralty jurisdiction exists to determine claims based on American law or foreign law whenever injuries occur on navigable waters in connection with the navigation of a vessel. The district court held that Mrs. Choo had no claims based on DOHSA or the general maritime law of the United States, and that the laws of Singapore applied to Mrs. Choo's claims. Therefore, after dismissal of Mrs. Choo's claims under American law, the district court still had jurisdiction in admiralty to adjudicate Mrs. Choo's claims based on the laws of Singapore. See Gilmore and Black, The Law of Admiralty (2d ed. 1975), § 6-62, p. 469; §6-63, p. 473; Sosa v. M/V Lago Izabal, 736 F.2d

1028, 1031 (5th Cir. 1984). 46 U.S.C. § 464 provides an additional basis for district courts to take jurisdiction of causes of action for deaths on the high seas brought pursuant to foreign law, but Mrs. Choo's DOHSA claims were specifically dismissed. Therefore, after the court's dismissal of the claims based on the Jones Act, DOHSA and the United States general maritime law. Mrs. Choo's only remaining claims were in admiralty based on the law of Singapore. These were dismissed on the grounds of forum non conveniens.

Accordingly, it is clear that Mrs. Choo is not asserting any "new" claims in the state court action which have not already been adjudicated. Therefore, even assuming arguendo that a subsequent change in circumstances would warrant reconsideration of the decision below, no such change in circumstances has been alleged. See, e.g., 1B

Moore's Federal Practice, § 0.415; Sanchez, supra, 552 F.2d at 73.

In Chick Kam Choo v. Exxon Corp., 699 F.2d 693, 694 (5th Cir. 1983), the Fifth Circuit's decision reveals that the district court below correctly applied the applicable federal choice of law and forum non conveniens principles announced by this Court in Lauritzen, supra, Romero, supra, Rhoditis, supra, and Gulf Oil, supra. The Fifth Circuit quoted the district court's findings as follows:

> ...Singapore's would be the controlling law, Singapore was the site of the accident, was the residence of most of the plaintiffs and witnesses, and could provide an adequate forum. The magistrate further concluded that Exxon could not assert its contractual indemnity rights against the Singapore shipyard in a United States action, presumably because of a lack of personal jurisdiction over the shipyard.

699 F.2d at 693-95.

Issue preclusion prevents Mrs. Choo from relitigating these findings, which

clearly indicate Singapore, and not the United States, is the convenient forum for resolution of this dispute. As the court stated in Sanchez, supra, 552 F.2d at 72:

> It is clear from the facts in the present case that plaintiffs-appellants pressed the same claim, involving the same parties and arising out of the same circumstances, before the district court in New York as they did before the district court in Puerto Rico. The issue of subject matter jurisdiction as to the Jones Act claims was "actually litigated and determined by a valid and final judgment," and that determination having been essential to that judgment, appellants are precluded from raising the issue once again in the Southern District of New York. Restatement of Judgments 2d, § 68 (Tent.Draft No. 1 1973).

See also Pastewka, supra, 565 F.2d at 853; Mizakami Bros. of Arizona v. Mobay Chemical Corp., 660 F.2d 712, 715 (8th Cir. 1981); Cabalceta v. Standard Fruit Company, 667 F.Supp. 833 (S.D. Fla. 1987).

The district court below made specific findings which indicated that Singapore law applies to Mrs. Choo's claims and that the

public and private interests would best be served by litigating this controversy in Singapore. The only arguably significant issue relevant to determination of a forum non conveniens motion which the federal court did not decide is whether or not any congestion in the Texas state court would make its acceptance of jurisdiction over this foreign controversy even more undesirable. Where, as here, the public and private interests clearly warrant dismissal, we submit it would be an abuse of discretion for a court to deny a motion based on forum non conveniens solely because there is no congestion in the court.

In these circumstances, assertion of the doctrine of res judicata in each subsequent suit commenced by foreign plaintiffs, like Mrs. Choo, is an unsatisfactory resolution, because plaintiffs have unlimited capacity to relitigate in the hope of find-

ing a forum that will accept them.

We respectfully submit that the district court properly enjoined Mrs. Choo and her attorneys from prosecuting her claim in the state court. Accordingly, for the reasons stated in respondents' brief, we submit the injunction was clearly proper pursuant to 28 U.S.C. § 2283 "to protect or effectuate" the judgment of the federal court below. See Pastewka, supra; Sanchez, supra; Cabalceta, supra.

III.

CONCLUSION

The maritime law requires the Texas state court and the district below to consider identical federal maritime choice of law and forum non conveniens principles to determine Mrs. Choo's action was properly dismissed. The district below properly adjudicated all issues relevant to determin-

ation of the choice of law and forum non conveniens issues, and entered a final judgment dismissing her claims. Therefore, direct estoppel precludes Mrs. Choo from relitigating the dismissal of her case and the judgment of the district court below issuing an injunction in aid of its judgment should be affirmed.

Dated: February 20, 1988

Respectfully submitted,

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